IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 16532 of 2004

Between:

1. Mr.V.Venkateswarlu, S/o Late Venkata Rangaiah, R/o Girmajipet, Warangal District.

2. Mrs.V.Laxmikanthamma, W/o Late Venkata Rangaiah, R/o Girmajipet, Warangal District

..... PETITIONERS

AND

1. The Joint Director of Agriculture, Warangal District, Warangal.

2. The Assistant Director of Agriculture, Warangal.

3. The Commissioner & Director of Agriculture, Hyderabad.

4. Government of Andhra Pradesh, rep.by its Principal Secretary, Agriculture and Cooperation Department, Secretariat, Hyderabad.

5. Government of Andhra Pradesh, rep.by its Secretary, Finance and Planning Department, Secretariat, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a Writ, Order or direction more in the nature of Certiorari calling for the records relating to the order in O.A.No.2946 of 1997 dated 8-11-1999 and the order in Review M.A.No.2210 of 2003 in O.A.No.2946 of 1997, dated 14-8-2003 of the Administrative Tribunal, Hyderabad and the impugned Proc.No.A2/2738/94, dated 26-4-1997 issued by the Joint Director of Agriculture, Warangal read with consequential Proc.No.A/150/97 dated 17-5-1997 issued by the Assistant Director of Agriculture (R) Warangal and set aside the same by holding the said orders as illegal, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution and also opposed to the scheme of Automatic Advancement Scheme issued in G.O.(P) No.2, F & P dated 4-1-1988

Counsel for the Petitioner:MR.V.RAVICHANDRAN.

Counsel for the Respondent No.: GP FOR SERVICES I.

The Court at the stage of admission made the following :

ORAL ORDER:

(Per the Hon'ble Sri Justice Goda Raghuram)

The Writ Petition is directed against the order of the A.P. Administrative Tribunal dated 08-11-1999 in O.A.No.2946 of 1997 and the order dated 14-08-2003, rejecting Review M.A.No.2210 of 2003 in the said O.A.

One V.Venkata Rangaiah, a Sub-Assistant of the Agriculture Department of the State had filed O.A.No.2946 of 1997 challenging the Proceedings dated 26-04-1997 of the Joint Director of Agriculture, Warangal and the consequent Proceedings dated 17-05-1997 of the Assistant Director of Agriculture, Warangal, whereby recovery of the higher amounts paid to the said individual from 01-07-1986 to 30-04-1997 towards the benefits of automatic advancement scheme and special promotion posts, was ordered and his pay also was directed to be stepped down removing the benefits, with effect from 01-07-1986. These orders were issued, having issued a show cause notice dated 25-02-1997 earlier proposing the very same action as contained in the Proceedings impugned in the O.A.

Sri V.Venkata Rangaiah earlier filed O.A.No.1129 of 1997 assailing the show cause notice. By the order of the Tribunal dated 26-03-1997, O.A.No.1129 of 1997 was dismissed. The Tribunal declared that there was no valid reason to entertain the O.A. and as Sri Venkata Rangaiah has already given his explanation to the show cause notice on 18-03-1997, the respondents should complete the enquiry expeditiously and pass an order after considering the explanation of the applicant dated
18-03-1997. In the O.A. No.1129 of 1997, the petitioner did not raise the question that the proposed action of recoveries and removal of the benefits, granted earlier towards special promotion posts and the like, could not be affected after long lapse of time, when these benefits were granted to without any misconduct or misrepresentation on his part. In any view of the matter, the Tribunal having upheld the show cause notice dismissed the O.A, the petitioner is estopped from now contending in O.A.No.2946 of 1997 that the consequent action in directing recoveries and stepping down of the pay is invalid for the reason that it was an action initiated after long lapse of time or without a finding that the petitioner had made any misrepresentation on the basis of which benefits were granted. The principles of constructive res judicata would bar any such challenge by Sri Venkata Rangaiah.

The Tribunal by the judgment dated 08-11-1999 dismissed the O.A.No.2946 of 1997 on merits on a conclusion that as the petitioner was granted the benefits with a condition that the amounts are liable to be recovered, if found, granted in error, he could not complain of the recoveries and as that it is clearly established that he was not entitled to the benefits and he was given reasonable opportunity before issuance

of the impugned orders, there was no error in the orders impugned. Aggrieved thereby, the petitioner sought a review of the judgment in Review M.A.No.7210 of 2003, which was also rejected by the order of the Tribunal dated 14-08-2003.

However, it requires to be noticed that Sri Venkata Rangaiah, the employee, had died after dismissal of the O.A. and the Review by the Tribunal and his legal representatives i.e., widow and son have now filed the writ petition, and they are in receipt of the family pension benefits.

In the circumstances, the respondents may in the interests of justice and equity, consider recovering the amounts from late Sri Venkata Rangaiah, from out of the family pension and other benefits payable to the writ petitioners, in reasonable instalments, duly considering the appropriate quantum of monthly instalment amounts. Nothing in this order should be construed as an impediment for the State Government to consider whether in the peculiar circumstances of the case, the Government should exercise its discretion and consider waiving of the recoveries. We leave it to the good sense of the State Government to take an appropriate decision on this matter.

The writ petition is disposed of accordingly at the stage of admission. No costs.

J.Chelameswar, J

Goda Raghuram, J

9th November, 2004.

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To

1. The Joint Director of Agriculture, Warangal District, Warangal.
2. The Assistant Director of Agriculture, Warangal.
3. The Commissioner & Director of Agriculture, Hyderabad.
4. The Principal Secretary, Agriculture and Cooperation Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
5. The Secretary, Finance and Planning Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
6. Two CCs to the G.P. for Services-I, High Court Buildings, Hyderabad (OUT).
7. Two CD copies.